

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H208665**

**ALESHA CANTRELL, EMPLOYEE**

**CLAIMANT**

**UNITED PARCEL SERVICE, INC.,  
EMPLOYER**

**RESPONDENT**

**LM INSURANCE CORPORATION,  
EMPLOYER**

**RESPONDENT**

**OPINION FILED DECEMBER 18, 2023**

Hearing before Administrative Law Judge Steven Porch on December 15, 2023, in Forrest City, St. Francis County, Arkansas.

Claimant represented himself *Pro Se*.

The Respondents were represented by Mr. David Jones, Attorney at Law, Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on a motion to dismiss filed by the Respondent on December 8, 2023. A hearing was set on December 15, 2023, in Forrest City, Arkansas. Claimant alleges she has sustained compensable injuries to her right shoulder, right knee, right hip, and right thigh on November 3, 2022. Claimant was represented by Ms. Laura Beth York until she filed a motion to withdraw as counsel on May 22, 2023. This motion was granted by the Commission on June 1, 2023. No request for a hearing has been made by the Claimant. A notice for the motion to dismiss hearing was received at the home the Claimant listed as her address on September 23, 2023. The notice listed the Quorum Courtroom as the location for the hearing but we were moved to the upstairs courtroom. A sign was placed on the Quorum Courtroom door listing the new upstairs location. Respondents counsel, David Jones, went downstairs to

see if the Claimant could be located. I did my own personal search for Claimant a few minutes after the 10:30 am start time trying to locate Claimant with no success. The hearing began approximately 20 minutes after the official start time when the Claimant could not be located. Respondents then went forward with their motion.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including Respondents' Exhibit 1, thirty-eight pages of non-medical records, Commission Exhibit 1, one page notice of hearing, Commission Exhibit 2, one page notice that was placed on the Quorum Courtroom door, and the argument of Respondents' counsel, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. All parties received reasonable and timely notice of the Motion to Dismiss and the hearing thereon pursuant to AWCC R. 099.13.
3. Respondents did prove by a preponderance of the evidence that Claimant has failed to prosecute his claim under AWCC R. 099.13.
4. The Motion to Dismiss should be, and hereby is, granted without prejudice.

## **III. DISCUSSION**

AWCC 099.13 provides:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution.

*See generally Johnson v. Triple T Foods*, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), Respondents must prove by a preponderance of the evidence that dismissal should be granted. The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’ credibility and how much weight to accord to that person’s testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

The evidence reflects that Claimant’s injury occurred on November 3, 2022, when she dropped off a package and had to run from a dog that resulted in injuries to her right thigh, right hip, right knee and right shoulder. Respondents accepted this claim as compensable and paid benefits. Since Claimant filed his Form C on December 13, 2022, and the subsequent withdrawal of Claimant’s formal counsel, Laura Beth York, this claim has been inactive. After considering all of the evidence, I find that Respondents motion should be granted under Rule 13. Thus, I find that the Respondent has proven by the preponderance of the evidence that its motion should be granted.

**CONCLUSION**

Based on the Findings of Fact and Conclusions of Law set forth above, Respondent's Motion to Dismiss is hereby granted *without prejudice*.

**IT IS SO ORDERED.**

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STEVEN PORCH  
Administrative Law Judge